

An Interview with  
STEVE QUAM

Conducted by Marta Monti  
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**Marta:** Today is March 9, 2016, and I am speaking with Steve Quam at Fredrikson & Byron, P.A. Can you start by telling me what your role was in the CapX2020 project?

**Steve:** Sure. Fredrikson, and me in particular, was retained to be the land rights council for the CapX projects in Minnesota. Well land rights council, what does that mean, right? When you build a project like this, it's built on real estate, and you have to make sure that the owners have the property rights necessary to allow them to construct and operate the transmission lines. So, anything that relates to the real estate aspect of how these transmission lines were going to be constructed, operated, maintained...we dealt with the legal side of that.

The regulatory, the routing, and the permitting side--we did not handle that. That was done by different law firms. We got involved...well, we worked with them because they are related. The conditions of the route permit relate to what we do as the people who acquire the land rights because we have to be consistent with what the permits say. And so, there was some involvement with us not so much during the permitting process, but there was a relationship between us and permitting council as issues arose because we had to be consistent.

The first time I remember getting involved...there are 11 project owners for the various lines, and the question was, as individual utilities or coops or muni's, they all had slightly different takes on what easement rights should be acquired. I remember the first meeting, it was up in Brainerd in some hotel. All of the siting and land rights representatives from each of the 11 came together and they discussed if we could have a uniform easement that could be used on the project. That was the first time I was involved because I've dealt with large linear transmission projects before, so I was kind of charges with synthesizing all 11 ideas and putting them into an easement document that would be used first for voluntary negotiations, and then second if we were forced to condemn property, it would be the rights we would acquire through the legal process.

**Marta:** So you created a template form that each project could use?

**Steve:** Sure. There was a base easement document that all of the parties agreed would be acceptable. And then there were certain situations where landowners would request certain aspect, and there were certain versions of the template that the group agreed could be used. So everyone understood what easement rights were being acquired by the tenants in common.

Now that's another interesting thing, is how did they hold these? From a legal perspective, they are tenants in common, which has a specific meaning. A tenant in common is different from a joint tenant or other relationships, and they ultimately decided to be tenants in common for the real estate interests.

**Marta:** Did this approach that you had with the CapX project differ from other large projects you've worked on in the past?

**Steve:** We've worked for other utilities, and when you're dealing with a single utility, they tend to have their own form and you don't have to bring the group together to kind of....because they are different. Different cultures, right? So you don't usually have to come together. For example, we have done large pipelines in the past. We'll review the pipelines easement documents and make comments, and we'll make sure they comply with Minnesota law, but there is no....it's kind of a two-way street, it's not an 11-way street.

**Marta:** Oh sure. Was the document more simplistic or more complicated as a result?

**Steve:** It was not more simplistic than a typical utility easement. Some things were a little different, but it wasn't more simplistic. You do need a document that works across a large area. For example, the Fargo line is 240 miles, and you have a wide variety of property types, and you need something that can be presented to most all landowners. That was a concern.

When you're dealing with a transmission line easement, it's linear. But sometimes you need access to that easement that doesn't work. There were some people outside of the group that did not like how the access was defined. The easement that was approved--and it's out there, it says what it says--but it gives the utilities the right to essentially do what makes sense. If there's a road, you use it. If there's not, you kind of find the most reasonable way there.

And that's broad. It could be characterized as a blanket, but there's two sides to that. Because a lot of this property, some of it will be developed in the future. Then the question is, do you have a blanket easement or a broader easement that allows you to do what is reasonable under all circumstances, or do you define an easement and then the landowner is forced to develop around your access. If you have an easement that is subject to the right to develop, they develop and we have to move. If we define it first, then they have to develop around us. So, arguably, what was done is certainly broad, but it provides the landowner with more flexibility in the future.

Another thing, sometimes projects like this...the transmission easement is typically 150 feet...sometimes to construct it you need more area, but it's difficult to tell when and where, and some people had problems with the lack of definition of the temporary easement as well. And again, we would define when requested, and when we didn't, it just provided flexibility to the utilities for unforeseen events. What's important is when something happens and you need to be there--we wanted to account for that situation so that we were prepared in the future. We didn't want to trespass, and at the same time we wanted to make sure that we had access. It's critical for utilities to have access to the property when they need it.

**Marta:** Right, if something happens to that pole or wire, they want to get there.

**Steve:** Exactly, and if they are outside the 150 foot area, the standard easement covers them in a situation like that.

**Marta:** You raised an interesting point about how this type of easement allows for future development on the property, and it's up to the landowner where they go and the utility has to react.

**Steve:** It gives the landowner flexibility and we work around the landowner. But certainly landowners don't all see it that way. In the Brookings line, once we realized that some landowners weren't happy with that, we defined easements for a number of landowners with a number of different lawyers.

**Marta:** Where there any project-specific terms written into the easements?

**Steve:** I don't think so. The voltage is different for the Bemidji-Grand Rapids line, but I don't think that affected the nature of the standard easement that was used. In certain cases the easement either paralleled or overlapped existing easements. As we sit here today, that may have affected the easement that was used depending on what was pre-existing, but I don't know that for a fact. That would be one thing that was maybe slightly different though.

Each project had a different group of owners, and each group of owners had to approve the form easement that was used. The easement that was used first was by the land agency, or the land acquisition team who would try to negotiate the acquisition of an easement. We weren't directly involved in that process.

**Marta:** As the projects moved along, since the construction was staggered, were there any lessons that you learned along the way...things that you learned through experience from the first project that changed the way you worked on the last?

**Steve:** What we talked about earlier with respect to the access easements. We developed a system and a process to work with some of the landowner's council, where if we had a problem we would try to solve it together.

You learn as you go, and when you have consistent lawyers on the other side, then you can develop a good enough relationship where you can call them, and say "here's the issue, do you think we can resolve it?" We would try, and if we couldn't then we'd figure out what the next step was. And sometimes that was going to one of the judges to give us a resolution, and that's fine. We just kinda needed to know the rules. And if we can agree on the rules, it works great.

And if we can't really figure it out, then we got some help. Over time the process got better as we were figuring out what we agreed on and what we didn't. Especially on the Fargo line.

These big projects are time sensitive. A construction project like this has to...it's linear, so you have to organize it so it runs efficiently otherwise it can get out of control. The more front end time we had to prepare for a filing, for example, the better. We could get better appraisals, we could give the land team more time to negotiate. The more front end time we had, the more successful we were. That's a big lesson. It's difficult to manage, because you don't know how many people are going to sign, you don't know how many parcels are going to go into condemnation. And the more parcels you have the more work is, then the time gets scrunched and it becomes more difficult to meet all the demands that everyone is putting on you. So, that's a big lesson--front end time is huge. It's sometimes difficult for people who don't do this for a living to understand how important front end time is for the rest of the project.

Same thing here.....there are pinch points. Under Minnesota law you have to obtain an appraisal before can condemn. Well, if the appraisers are all busy and all spread out, and we have a possession date by X, but we can't get the appraisals, we've got a real problem. And that kind of highlights the logistics of making sure you have your professionals in order early on.

**Marta:** Right, because if you have one or two in a row, and you have the construction crew breathing down your neck...

**Steve:** It doesn't work. You have to have the line for a segment. You have to know when you're going to get title and possession to that easement for construction purposes.

**Marta:** Have any of the other projects you've worked on been this large? Maybe a pipeline project?

**Steve:** Umm, well, this is a huge project. The last time that there was a transmission upgrade like this...well, I don't know if there was a last time, but the time that was close was in the 70s with the DC line and the stuff that spun from it. We've done big pipeline projects that have run from Alberta to Chicago. But it's a single project and we've just dealt mainly with Minnesota. So, roughly comparable, but not 4 projects overlapped at once in different parts of the state. That was a lot. Or, it is a lot--it's not done yet.

**Marta:** Okay, thanks. I just wanted some perspective on if this was out of the ordinary, or through other projects you encounter similar circumstances.

**Steve:** It is out of the ordinary. And there's a couple things that have changed. When we dealt with the Alliance pipeline project and when we dealt with MinnCan pipeline--that was pre-2006.

In 2006 the eminent domain laws changed in Minnesota, fairly drastically at that. It added a bunch of procedural requirements and other factors that...it just changed the process for acquiring land for any kind of project, but in particularly a long one. This is a first major project that has been done under the new statute.

**Marta:** Along those same lines, it is the first time that the Buy the Farm laws were really tested, right?

**Steve:** Um, kind of right. Buy the Farm was enacted in the 1970s in connection with the famous powerline cases that got attention in Stearns County. There were Buy the Farm elections...a handful back in the early 80s. Those elections generated two Supreme Court cases, one in 1981 and one in 1984, that attempted to put some clarification onto the statute, and to some extent they did, but a lot of questions were left open. Questions about what it means, how it's applied, what really happens. And so this is the first time that there have been scores of elections made, ever, and it's the first time since the early 1980s that it's been used at all.

**Marta:** So you mentioned this earlier, your relationship with some of the other lawyers--that you could call them up to work through some of the easement stuff that came up. Was the same true with Buy the Farm?

**Steve:** We did. On the very front end, if you read the statute, it's...I think I can say this without getting in trouble...it's not drafted as clearly as a lawyer would like it to be. There are tons of questions regarding what is a valid election, what is an invalid election... The statute was amended mid-project, but right when we got into it, there was a question about pretty much everything. And we sat down with another lawyer from a separate firm and we drew a Venn diagram.....we really sat down and thought about how we thought it should work.

There were a couple of basic things we were trying to accomplish. One was, if there was an objection to an election, when should it be made and how do we get it to a court for resolution? And we kind of agreed on how to do that, and it worked out pretty well. Because if there were uncertainties we would ask for guidance. We tried to agree when we could.

And then the big picture thing that we all agreed to do was....you know, people who have homes qualify for Buy the Farm election. They are put in a spot where they don't know how the statute works either, but they know they want to move. We worked with the other lawyers to make sure that if they found a place, we'd figure out a way to close on their house and to get them into the new one. And that wasn't in the statute. We make it happen. It's not in the statute, but the project worked with the landowners to get them to a place where they wanted to go.

**Marta:** Is that kind of collaboration typical in your work? Do you normally work this closely with the lawyers from the other side?

**Steve:** I try to as a lawyer, because if you can get agreement, and it makes sense and you can avoid the courts, it makes more sense. I have always tried to do that. Is it typical? Probably not. It's typically pretty adversarial in the legal world because that's kind of our system.

**Marta:** What if that collaboration hadn't been there. Would you still have been able to get the work you wanted to accomplish in the same amount of time?

**Steve:** There were so many open issues that could have been contested, and a lot were brought to court for resolution, but there would have been a lot more. I don't know what would have happened with respect to the legislature, if there would have been a better fix or if there would have been more clarity. It would have been, in general, a more difficult process for all involved. Maybe some landowners think that it didn't go well as it is, and they are on the other side of the perspective. But from my perspective as someone who has acquired land for 18 years, it could have gone *a lot* worse on stuff like this with a statute that no one really understands.

**Marta:** Was this because of you and your personality, or was part of this influenced by the culture of collaboration from the CapX group?

**Steve:** Without question the collaboration and the approach of the project owners was to try to find a reasonable result that was fair to all parties. It wasn't "press the letter of the law every time you can," it was, "if you can make something work, let's try to do it."

Without question. At worst it was trickle down, and more likely it was the approach the project took across the board, and I understood that and I was on board and part of the team.

**Marta:** Well thank you, that concludes our time together today, and this has been very helpful.

**Steve:** My pleasure, thank you.